

General Information Letter: Determination of whether person is an employee or independent contractor is made by the IRS.

January 14, 1998

Dear:

This is in response to your letter dated January 8, 1999 in which you request the following:

We are organizing a new business. We expect to have a number of individuals working with us. We believe they would be independent contractors, not employees. Please let me know what we should do to get a ruling as to whether the relationship is that of employees or independent contractors.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill. Adm. Code Part 1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

With respect to your question as to whether your workers would be classified as employees or independent contractors, please note that the Illinois Income Tax Act ("IITA") does not define the terms "employee" and "independent contractor". Section 102 of the IITA, however, requires the Department to follow the Internal Revenue Service's determination of whether an individual is an "employee" or "independent contractor". Enclosed please find a copy of Section 102 of IITA which reads as follows:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year. (Source: Public Act 77-726).

Thus, an "employee" for federal tax purposes is also an "employee" for Illinois income tax purposes; likewise, an "independent contractor" for federal tax purposes is an "independent contractor" for Illinois income tax purposes. Enclosed please find Form SS-8 entitled

"Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding." As indicated on Page 1 of Form SS-8, once you have completed said form, send to the

Internal Revenue Service
SS-8 Determinations

P.O. Box 1231, Stop 4106 AUSC
Austin, TX 78767

Your letter indicates that you believe your workers would be independent contractors. Please note that generally workers are deemed to be employees unless proven otherwise, such as in the Illinois Unemployment Insurance Act, 820 ILCS 405/212. Therefore, we would advise that you seek a determination from the Internal Revenue Service by sending the enclosed Form SS-8 to the address listed above.

Should you have further questions regarding this matter or questions relating to the enclosed form, please feel free to contact our office.

Sincerely,

Heidi Scott
Associate Counsel